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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,421	01/22/2002	Norbert Dicken	PHNL 010076	7249

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P.O. BOX 3001
BRJARCLIFF MANOR, NY 10510

EXAMINER

CHOI, JACOB Y

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,421

Applicant(s)

DICKEN ET AL.

Examiner

Jacob Y. Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 14, 17-21 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14, 17-21, 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a first portion of said curtain and a second portion of said curtain must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 13 is objected to because of the following informalities: the phrase *"wherein at least a portion of any light passing into said second chamber"*, in line 13-14 does not refer back to at least a portion of any light emitted by the at least one tubular lamp. Following limitation of "any light" should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Appropriate correction is required.

3. Claim 20 is objected to because of the following informalities: the phrase *"wherein at least a portion of any light passing into said second chamber"*, in line 13-14 does not refer back to at least a portion of any light emitted by the at least one tubular lamp. Following limitation of "any light" should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Appropriate correction is required.

4. Claim 30 is objected to because of the following informalities: the phrase *"wherein at least a portion of any light passing into said second chamber"*, in line 12-13 does not refer back to at least a portion of any light emitted by the at least one tubular lamp. Following limitation of "any light" should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Appropriate correction is required.

5. Claim 31 is objected to because of the following informalities: the phrase *"wherein at least a portion of any light passing into said second chamber"*, in line 11-12

does not refer back to at least a portion of any light emitted by the at least one tubular lamp. Following limitation of "any light" should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 20 recites the limitation "said chamber" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Note: it is unclear because since there is a first chamber and a second chamber

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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8. Claims 13, 14, 17-21, 23-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 9, 14, 16, 17, 21, 24, 25, 26 and 28 of U.S. Patent No. 6,655,815. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Where terms "first and the second luminaire" can be directed to the term "the first and second chamber". Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide multiple luminaire of U.S. Patent No. 6,655,815, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Application Claim #	U.S. Patent No. 6,655,815 Claim #
13	1, 14, 21, 26
14	1, 14, 21, 26
17	5, 16, 24
18	5, 16, 24
19	16, 17, 25
20	1, 14, 21, 26
21	1, 14, 21, 26
23	1, 14, 21, 26
24	5, 16, 24
25	5, 16, 24
26	16, 17, 25
27	1, 14, 21, 26
28	1, 9, 14, 21, 26, 28
29	1, 9, 14, 21, 26, 28
30	1, 9, 14, 21, 26, 28
31	1, 9, 14, 21, 26, 28

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13, 20, 23, 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grill et al. (USPN 6,042,243).

Regarding claim 13, Grill et al. discloses a first luminaire/chamber for accommodating at least one tubular lamp (40, 92), and a second chamber defined by a light emission window (50), a curtain (Figure 7), and sidewall (Figures 1, 2), wherein, when that at least one tubular lamp is located within the first luminaire/chamber at least a portion of any light emitted by the at least one tubular lamp passes through the curtain with a first homogenous light distribution, and wherein at least a portion of any light passing (any outside lights, sunlight) passes through the light emitting window with a second homogenous light distribution.

Grill et al. discloses the claimed invention except for the light transmitting side wall(s).

Grill suggest that the frame (12) may be formed of any material which is rigid and of sufficient strength to support the remaining components of the light box, as well as any additional display elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize light transmitting frame material, such as transparent plastic, since it has been held to be within the general skill of a

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worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design variation. *In re Leshin*, 125 USPQ 416.

Regarding claims 20 and 23, Grill et al. discloses a first luminaire/chamber for accommodating at least one tubular lamp, and a second luminaire/chamber defined by a light emission window and a carrier wall, and a curtain disposed within the luminaire/chamber wherein, when the at least one tubular lamp is located within the first chamber, at least a portion of any light emitted by the at least one tubular lamp passes through a first homogenous light distribution, wherein at least a portion of any light passing into the second luminaire/chamber passes through the light emitting window with a second homogenous light distribution, and wherein a first portion of the curtain is spaced from the carrier wall and a second portion of the curtain is affixed to the carrier wall (Figures 1, 3, 7).

Grill et al. discloses the claimed invention except for the light transmitting side wall(s).

Grill suggest that the frame (12) may be formed of any material which is rigid and of sufficient strength to support the remaining components of the light box, as well as any additional display elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize light transmitting frame material, such as transparent plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design variation. *In re Leshin*, 125 USPQ 416.

Regarding claim 27, Grill et al. discloses a first luminaire (10"; Figure 3) including a first homogenous light distribution luminaire and a second homogenous light distribution luminaire (10'; Figure 3) both defined by a first side wall (13; Figure 4), the second homogenous light distribution luminaire further defined by a first light emission window (50), a second luminaire including a third (10''') homogenous light distribution luminaire, wherein a first edge of the first light emission window lies against a second edge of the second light emission window (Figure 3), and wherein the first side wall and the second side wall both include a light-transmitting material (claim 12, lines 12-14).

Grill et al. discloses the claimed invention except for the fourth luminaire and a light transmitting side wall(s).

First, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a fourth luminaire with the first to third luminaire, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Second, Grill suggest that the frame (12) may be formed of any material which is rigid and of sufficient strength to support the remaining components of the light box, as well as any additional display elements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize light transmitting frame material, such as transparent plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design variation. *In re Leshin*, 125 USPQ 416.

Regarding claim 28, Grill et al. discloses the claimed invention, explained above. In addition, Grill et al. discloses the first sidewall abuts the second sidewall.

Regarding claim 29, Grill et al. discloses the claimed invention, explained above. In addition, Grill et al. discloses the first sidewall and the second sidewall are integrated to form one sidewall (Figure 4).

Regarding claim 30, Grill et al. discloses the claimed invention, explained above. In addition, Grill et al. discloses the first luminaire includes a curtain (10, 10', 10'') disposed within the second homogenous light distribution luminaire, wherein, when at least one tubular lamp (40, 92) is located within the first homogenous light distribution luminaire, at least a portion of any light emitted by the at least one tubular lamp passes through the curtain into the second homogenous light distribution luminaire with a first homogenous light distribution (light transmitting sidewalls), and wherein at least a portion of any light (any outside lights, sunlight) passing into the second homogenous light distribution (light transmitting sidewalls, transmitting any light) luminaire passes through the first light emitting window with a second homogenous light distribution.

Regarding claim 31, Grill et al. discloses the claimed invention, explained above. In addition, Grill et al. discloses the second homogenous light distribution luminaire is further defined by a carrier wall (Figure 1 and 2), wherein, when at least one tubular lamp (40, 92) is located within the first homogenous light distribution luminaire (10, 10', 10''), at least a portion of any light emitted by the at least one tubular lamp passes through the carrier wall into the second homogenous light distribution luminaire with a first homogenous light distribution.

Response to Amendment

11. Examiner acknowledges that the applicant has amended claims 13, 14, 19, 20, 21, 26, 27, 30 and 31 and canceled claims 1-12, 15, 16 and 22.

Response to Arguments

12. Applicant's arguments with respect to claims 13, 14, 17-21, 23-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kristofek (USPN 4,626,969) – wall wash track lighting fixture

Bhatt (USPN 4,157,584) – overhead lighting fixture


Okubo (USPN 5,446,634) – construction material

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Y. Choi whose telephone number is (571) 272-2367. The examiner can normally be reached on Monday-Friday (10:00-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC



JOHN ANTHONY WARD
PRIMARY EXAMINER